IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.
WRIT PETITION NO.278 of 2004.

Arun Dattatraya Narke and Ors. **Petition**ers.

Versus.

The State of Maharashtra & Ors. Respondents.

Shri. Shailesh Kanthariya for the petitioners.
Shri. S. S. Patwardhan for respondent no.2.
Shri. Rajesh More, A.P.P., for the State.

CORAM :S.R.DONGAONKAR.J.
DATED :19/04/2006.

P.C.

. Heard Shri.Shailesh Kanthariya for the petitioners, Shri. S. S. Patwardhan for respondent no. 2 and Shri. Rajesh More, A.P.P., for the State.

. Rule. Respondents waive service.

. The matter is heard finally with consent and finally disposed of.

. The petitioners,under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, seeks to challenge the order dated 16th December, 2003 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No. 262 of 2003 arising out of the order passed by the learned Judicial Magistrate, First Class, Court No.2. Kolhapur below Exh.23 in Regular Criminal Case No. 633 of 2000 dated 19th July, 2003.

. The facts leading to this petition are thus; The present petitioners are arrayed as accused in Regular Criminal Case No. 633 of 2000 filed by respondent no.2 who is the complainant. It is the educational school and

the complaint is filed through its Head Master, Ratnakar Padmashree. The petitioners are the landlord of the tenanted premises where the school is situated. It is on the upper floor of the premises whereas the ground floor is in the possession of the petitioners. It is alleged that there are disputes between these parties and sometime on 6th June, 2000, the petitioners i.e. the accused started cutting the wooden beams and wooden pillars which are fixed for the support of the roof of the flooring of respondent no.2's premises through the labourers etc. It is alleged that respondent no.2 had filed a complaint in Old Rajwada Police Station. But no action was taken, so the complaint case was filed.

. It is alleged that respondent no. 2 had suffered loss to the tune of Rs.70,000/-and the act of the petitioners[accused]had attracted charges under Sections 425, 426, 427 and 440 read with Section 34 of the Indian Penal Code. The learned Magistrate had issued process for the aforesaid offences by his order dated 13th October, 2000.

. The petitioners/accused appeared before the Trial Court at Kolhapur and moved an

application under Section 245 of the Code of Criminal Procedure for discharge. The same was heard by the learned Magistrate who dismissed it. In the Court of Sessions, Criminal Revision Application No. 262 of 2003 was preferred. However, the said Revision Petition was rejected by the learned Sessions Judge on 16.12.2003.

. This order is challenged by the petitioners in this proceeding.

. The learned counsel for the petitioners submitted that the charge was groundless, and,therefore, the learned Magistrate should have discharged the accused under Section 245 of the Cr.P.C. He submitted that the said structure had been dilapidated since long and there was a notice of the Municipal Corporation to rage the same. It is further contended that the petitioners accused were not responsible for any damage to the said property, further so as to cause loss to the complainant/respondent no.2,and, therefore this petition should be allowed by allowing the application for discharge submitted by the accused/petitioners.

. To counter this, the learned counsel

for the respondent-complainant has submitted that the photographs of the premises i.e. of the portion of the ceiling removed, which show that the accused persons had deliberately removed the same so as to cause loss to the complainant and to make them to vacate the premises. It is also submitted that the notice received by the complainant to shift the school was in respect of other school. According to him, the accused have themselves disentitled to claim discharge in view of the circumstances of the case.

. On perusal of the complaint and the verification statement of the complainant, it would be seen that the complainant had submitted that the concerned premises are owned by the accused petitioners. The complainant is running school to the east of which also one Tyagini Lilavati Govind Phadnis Vidyalaya which is run by one Shri. Saraswati Seva Mahila Mandal. According to the complainant, the accused is in possession of the ground floor and the first floor is in possession of the complainant. On 5.6.2000 the accused started cutting the pillars and the beams of this premises (in his possession) and so the complainant lodged their report to the Police

Station. Thereafter, the accused stopped the work and again started the said work with an intention to compell the complainant to vacate the said premises. According to him, the accused have been politically influential people and so cognizance of complaint was not taken by the Police authorities.

. On this statement the process was issued.

. The application of the accused, for discharge was rejected, by recording the reasons by the learned Magistrate that the complainant's record reveals that till the date complainant was running school. The learned Magistrate also found that there are strong grounds to proceed against the accused and evidence before charge is yet to be recorded. He, therefore, rejected the application for discharge by his order dated 19th June, 2003.

. In revision application, the learned Additional Sessions Judge also recorded the same reasons and found that the complaint against the accused was not ground-less.

. At this stage, it is necessary to

peruse the provisions of Section 245 of the Cr.P.C. It reads as under:

> [1] If, upon taking all the evidence referred to in S.244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.
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> [2] Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

. On perusal of the same, it would be seen that if the accused has no sufficient evidence against him to warrant his conviction, accused shall be discharged whereas the sub Section (2) provides that nothing in this Section shall be deemed to prevent a Magistrate

from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

. It is apparant that a Magistrate if satisfied that the charge is groundless and that the facts do not constitute the criminal offence, he can discharge the accused at any earlier stage of trial.

. Here the learned Magistrate, does not come to required conclusion. The evidence to be submitted by the complainant, is yet to be recorded.

. The photograph shown by the learned counsel for the respondents reveals that there is square type of hole in the ceiling i.e., in the premises between that of accused and the complainant. Had the said structure been fallen on its own, it would not have been of so squared type. Of course, this is prima facie opinion. The truth has to be found out after evidence is led and tested by way of cross-examination.

. No doubt, there is exchange of notices and notices issued by Kolhapur Municipal

Corporation to show that the concerned building is dilapidated and it requires to be pulled down. But disputed question is whether beams or pillars were pulled down at the instance of the accused. It is claimed by the accused that it had automatically fallen down. On considering the contentions of the learned counsel, it appears that all these contentions need to be tested by way of cross-examination and this cannot be done unless the evidence before charge is recorded fully. Once the process has been issued, unless there is a case made out as per requirement under Section 245 of the Cr.P.C.,accused will not be entitled for discharge and hence leading of evidence before charge in the trial court is must.

. For these reasons, this petition cannot be allowed. Accordingly it has to be dismissed.

. Trial Court to proceed with the matter without being influenced by any of the above observations.

. Ordered accordingly.

S.R.DONGAONKAR.J.